

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

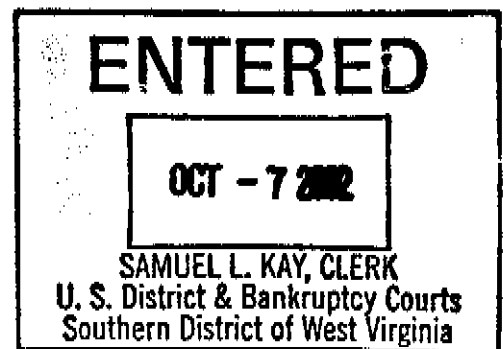
CHARLESTON DIVISION

IN RE: SERZONE
PRODUCTS LIABILITY LITIGATION

MDL NO. 1477

THIS DOCUMENT RELATES TO ALL CASES

PRETRIAL ORDER #2



I. Filing of Pretrial Order No. 2

A copy of this order shall be filed in each Serzone-related case transferred to, removed to, or filed in this district and shall apply to all such cases. In cases subsequently filed in this district, a copy will be provided by the Clerk to each plaintiff at the time of filing of the complaint. In cases subsequently removed or transferred to this court, a copy will be provided by the Clerk to each new party upon removal or transfer.

II. Motions

A. Notice of Substantive Motions

Except for unusual circumstances as determined by the court or when a ruling is required on a shortened basis, substantive motions shall not be brought for hearing at any time other than a regularly scheduled status conference, to be set from time to time by the court. A substantive motion is one that involves legal issues and is outcome determinative, such as a motion for summary judgment, class certification, etc.

B. Length of Briefs and Briefing Schedule

Absent leave of court, the length and timing of briefs in support of, or in opposition to, any motions shall conform to the relevant Local Rules of this court.

In order to be heard at a regularly scheduled status conference, motions must be fully briefed at least one week before the conference. This instruction notwithstanding, the court may, in its discretion, consider motions fully briefed within one week of the upcoming conference at that next conference.

C. Telephone Status Conferences

Status conferences may be conducted by telephone at the court's discretion by prior arrangement with the court's chambers, provided that all interested parties are available and receive at least forty-eight (48) hours notice. In an emergency, the court may shorten the notice requirement. Telephone conferences may serve as a substitute for court appearances when, for example, counsel desire to present short arguments and obtain an immediate ruling. The court may initiate conference calls on procedural or scheduling matters.

III. Service of Documents

A. Orders

Henceforth, the Clerk of Court shall forward only to Plaintiffs' Liaison Counsel and Defendant's Liaison Counsel a copy of each order or other document normally served by the Clerk. Service on Liaison Counsel shall be considered service on all parties.

B. Service of Original Complaints

In order to eliminate disputes over service of process and reduce the expense of service, defendant Bristol-Myers Squibb Company has agreed to accept service of original process in any

Scrzone case filed in a United States District Court, without waiving any objections other than as to the manner of service, if a copy of the summons and complaint is sent by certified mail, return receipt requested, to:

Zenola Harper, Esq.
Vice President and Senior Counsel
Bristol-Myers Squibb Company
345 Park Avenue
New York, New York 10145

All plaintiffs in cases filed in, transferred to, or removed to this court prior to or on the day of this order shall have thirty (30) days from the entry of this order in which to effect service of process on defendant.

C. Pleadings, Motions, and Other Documents

A party filing a pleading, motion, or other document shall provide one (1) copy to Plaintiffs' Liaison Counsel and one (1) copy to Defendant's Liaison Counsel. A copy of the document shall also be submitted to Liaison Counsel on a disc or CD-ROM in either WordPerfect or Microsoft Word format. Service on Plaintiffs' Liaison Counsel constitutes service on all plaintiffs' counsel and plaintiffs who are unrepresented. Service on Defendant's Liaison Counsel constitutes service on Bristol-Myers Squibb Company. Service and distribution by Liaison Counsel to other attorneys of record shall be by overnight courier service or telecopier within two days after receipt, reserving to any receiving counsel the right to waive, in writing, such receipt.

D. Electronic Service / Web Site / Virtual Depository

Plaintiffs and defendant are to confer as to whether electronic service of documents is appropriate in these actions and/or whether a web site and virtual depository would be helpful and advance the course of litigation. If the parties wish to establish some such system, Liaison Counsel

for plaintiffs and defendant shall report to the court regarding these matters.

IV. Organization of Counsel

A. Plaintiffs' Counsel

1. Lead and Liaison Counsel

The following are hereby appointed as Co-Lead and Co-Liaison counsel for plaintiffs:

Carl N. Frankovitch, Esq.
Frankovitch, Anetakis, Colantonio & Simon
337 Penco Road
Weirton, WV 26062
(304) 723-4400 Telephone
(304) 723-5892 Fax
e-mail: carln@facslaw.com

Marvin W. Masters, Esq.
Masters & Taylor, L.C.
181 Summers Street
Charleston, WV 25301
(304) 342-3106 Telephone
(304) 342-3189 Fax
e-mail: masters-taylor@msn.com

2. Duties and Responsibilities of Plaintiffs' Lead and Liaison Counsel

Notwithstanding the fact that the same two attorneys have been appointed Plaintiffs' Co-Lead and Co-Liaison Counsel, the court will enumerate the duties of Lead Counsel and the duties of Liaison Counsel separately:

a. Lead Counsel

The Plaintiffs' Lead Counsel shall have the following responsibilities:

(1) Act as spokesperson for all plaintiffs at pretrial proceedings and in response to any inquiries by the court, subject to the right of any plaintiff's counsel to present non-repetitive individual or different positions as long as the presentation does not unduly delay the

proceedings.

(2) Submit and argue any verbal or written motions presented to the court or magistrate on behalf of the plaintiffs as well as oppose, when necessary, any motions submitted by the defendant which involve matters within the sphere of the responsibilities of Lead Counsel.

(3) Examine witnesses and introduce evidence at hearings on behalf of plaintiffs.

(4) Negotiate and enter into stipulations with defendant regarding this litigation. All stipulations entered into by Lead Counsel, except for strictly administrative details such as scheduling, must be submitted for court approval and will not be binding until the court has ratified the stipulation. Any attorney not in agreement with a non-administrative stipulation shall file with the court a written objection thereto within ten (10) days after service by liaison counsel of the stipulation. Failure to object within the term allowed shall be deemed a waiver and the stipulation will automatically be binding on that party.

(5) Explore, develop and pursue all settlement options pertaining to any claim or portion thereof of any case filed in this litigation.

(6) Perform such other functions as may be expressly authorized by further orders of this court

b. Liaison Counsel

The Plaintiffs' Liaison Counsel shall have the following responsibilities:

- (1) to serve as the recipient of all court orders;
- (2) to coordinate service and filings;

(3) to maintain and distribute to co-counsel and to Defendant's Liaison Counsel an up-to-date service list;

(4) to receive and distribute pleadings, orders, and motions by overnight courier service or by telecopier within two days after receipt, unless such service has been waived, in writing, by a receiving counsel;

(5) to maintain any document depository that is established, and to make such available to all plaintiffs' counsel;

(6) to maintain and make available to all plaintiffs' counsel of record at reasonable hours a complete file of all documents served by or upon each party (except such documents as may be available at a document depository);

(7) to carry out other such duties as the court may order.

Plaintiffs' Lead and Liaison Counsel shall be entitled to seek reimbursement for costs expended at the time and in a manner approved by the court.

3. Plaintiffs' Executive Committee

It is the court's intent to appoint a Plaintiffs' Executive Committee ("Executive Committee") to conduct and coordinate the discovery stage of this litigation with the defendant's representatives.

The following are hereby appointed to the Plaintiff's Executive Committee:

Stanley M. Chesley, Esq.
Waite, Schneider, Bayless & Chesley Co., LPA
1513 Fourth & Vine Tower
One West Fourth Street
Cincinnati, OH 45202
(513) 621-0267 Telephone
(513) 621-0262 Fax
e-mail: stanchesley@wsbclaw.com

Carl N. Frankovitch, Esq.
Frankovitch, Anetakis, Colantonio & Simon
337 Penco Road
Weirton, WV 26062
(304) 723-4400 Telephone
(304) 723-5892 Fax
e-mail: carln@facslaw.com

Marvin W. Masters, Esq.
Masters & Taylor, L.C.
181 Summers Street
Charleston, WV 25301
(304) 342-3106 Telephone
(304) 342-3189 Fax
e-mail: masters-taylor@msn.com

Dianne M. Nast, Esq.
Roda & Nast, PC
801 Estelle Drive
Lancaster, PA 17601
(717) 892-3000 Telephone
(717) 892-1200 Fax
e-mail: dnast@rodanast.com

Daniel E. Bechnel, Jr., Esq.
Law Offices of Daniel E. Bechnel, Jr.
106 West 7th Street
P.O. Drawer H
Reserve, LA 70084
(985) 536-1186 Telephone
(985) 536-6445 Fax
(985) 652-6747 Home
e-mail: dbechnel@rtconline.com, dbechnel@gulfsouth.verio.com

John R. Climaco, Esq.
Climaco, Lefkowitz, Peca, Wilcox & Garofoli Co., LPA
Suite 900, The Halle Building
1228 Euclid Avenue
Cleveland, OH 44115
(216) 621-8484 Telephone
(216) 771-1632 Fax
e-mail: jrcлим@climacolaw.com

Richard Arsenault, Esq.
Neblett, Beard & Arsenault
2220 Bonaventure Court
P.O. Box 1190
Alexandria, LA 71301
(318) 487-9874 Telephone
(318) 561-2591 Fax
e-mail: rarsenault@nbalawfirm.com

Charles S. Zimmerman, Esq.
651 Nicholette Mall, #501
Minneapolis, MN 55402
(612) 341-0400 Telephone
(612) 341-0844 Fax
e-mail: csz@zimmreed.com

4. Duties and Responsibilities of Plaintiffs' Executive Committee

The Executive Committee will have the following responsibilities:

a. Discovery.

(1) Initiate, coordinate and conduct all pretrial discovery on behalf of all plaintiffs who file civil actions which are consolidated with the instant multidistrict litigation known as "MDL-1477, In re Serzone Products Liability Litigation."

(2) Develop and propose to the court schedules for the commencement, execution and completion of all discovery on behalf of all plaintiffs.

(3) Cause to be issued in the name of all plaintiffs the necessary discovery requests, motions, and subpoenas pertaining to any witnesses and documents needed to properly prepare for the pretrial of relevant issues found in the pleadings of this litigation. Similar requests, notices and subpoenas may be caused to be issued by the Executive Committee upon written request by an individual attorney in order to assist that attorney in the preparation of the pretrial stages of the particular claims asserted by their clients.

(4) Conduct all discovery in a coordinated and consolidated manner on behalf of and for the benefit of all plaintiffs. With regard to depositions, only two members of the Executive Committee or counsel duly authorized by them may question each deponent, provided that the second questioner is not repetitious. No attorney for plaintiffs may be excluded from attending the examination of witnesses and other proceedings. Such attorney may suggest questions to be posed to deponents through the designated Executive Committee members provided that such questions are not repetitious.

b. Miscellaneous.

(1) Call meetings of counsel for plaintiffs for any appropriate purpose, including coordinating responses to questions of other parties or the court.

(2) Prepare periodic status reports summarizing the Executive Committee's work and progress. These reports shall be submitted to the Plaintiffs' Liaison Counsel who will promptly distribute copies to all plaintiffs' attorneys. The periodic status and progress reports must be forwarded to all plaintiffs counsel at intervals of no more than sixty (60) days commencing from the date of this order, and more frequently in the event of significant matters appropriate for communication.

(3) Perform any tasks necessary and proper for the Executive Committee to accomplish its responsibilities as defined by the court's orders.

Reimbursement for costs and fees for services of the Executive Committee will be set at a time and in a manner established by the court after due notice to all counsel and after a hearing.

5. Compensation

Plaintiffs' counsel shall meet and confer regarding compensation for plaintiffs' attorneys involved in this litigation. Plaintiffs' Liaison Counsel shall report to the court on this matter by January 1, 2003.

B. Defendant's Counsel

1. Liaison Counsel

The court hereby designates as Defendant's Liaison Counsel:

Michael B. Victorson, Esq.
Jackson & Kelly, PLLC
1600 Laidley Tower
P.O. Box 553
Charleston, WV 25322
(304) 340-1000 Telephone

Defendant's Liaison Counsel shall have the following responsibilities:

- a. to serve as the recipient of all court orders;
- b. to coordinate service and filings;
- c. to maintain and distribute to co-counsel and to Plaintiffs' Liaison Counsel an up-to-date service list;
- d. to receive and distribute pleadings, orders, and motions by overnight courier service or by telecopier within two days after receipt, unless such service has been waived, in writing, by a receiving counsel; and
- e. to carry out other such duties as the court may order.

2. Lead Counsel

The court hereby designates as Defendant's Lead Counsel:

Michael A. Tanenbaum, Esq.
Sedgwick, Detert, Moran & Arnold

One Gateway Center, 11th Floor
Newark, NJ 07102
(973) 242-0002 Telephone

Lead counsel for the Defendant shall have the following responsibilities:

- a. To determine (after consultation with the defendant) and present (in brief, oral argument or such other fashion as may be appropriate, personally or by a designee) to the court and opposing parties the position of the defendant on all matters arising during these pretrial proceedings;
- b. To delegate the specific tasks in a manner to ensure pretrial preparation for the defendant is conducted effectively, efficiently and economically; and
- c. To perform such other duties as may be incidental to proper coordination of the defendant's pretrial activities or authorized by further order of the court.

V. Pleadings and Motions Schedule

A. Certification of Class Action(s)

At the appropriate time, the parties are to establish a schedule, or request the court to establish a schedule, for the filing of any class certification motions. While the court is not at this time limiting discovery to class certification-related issues, the court intends that class certification motions will be made as soon as practicably possible after a reasonable opportunity to conduct discovery necessary for such motions.

B. Pleadings and Motions Schedule

At the appropriate time, the parties are to meet and confer to establish, or request the court to establish, a schedule for filing a Master Complaint, Master Answer, Rule 12 Motions, Daubert Motions or any other Summary Judgment or Dispositive Motions.

VI. Discovery

A. In General

The plan for document production, interrogatories, requests for admission, and depositions shall be developed based on the following principles: (1) discovery should be conducted on the assumption that there may be a separate trial for each case (federal or state); (2) additional "true discovery" will not be needed with respect to many potential witnesses who have previously testified in depositions or in trials; (3) videotaped depositions (which are also stenographically recorded) should be taken for potential use as trial testimony of all persons whose testimony will likely be needed in a number of trials, thereby enabling trials to be conducted in different courts at the same time without complications arising from unavailability of witnesses; (4) through use of a document depository, all parties in any federal or state court should have quick and inexpensive access to, and the ability to retrieve, (A) all existing and future depositions, interrogatories, requests for admission, and trial transcripts in text-readable and searchable computer files and (B) all potentially relevant documents from the defendant and other sources that are likely to be used during depositions or at trial in more than a single case; (5) claims of confidentiality and use of "protective" orders restricting use of materials should be kept to an absolute minimum; (6) some discovery will be "national" in scope (*i.e.*, potentially needed in various cases throughout the country), while other discovery will be "regional" (*e.g.*, depositions from physicians who prescribed Serzone to numerous patients) and still other discovery will be "case-specific" (*e.g.*, depositions of plaintiffs); (7) the plan should be designed to accommodate coordinated, cost-efficient discovery in both federal and state courts; and (8) in order to minimize unnecessary burdens and expense of redundant discovery, parties should not submit document requests, interrogatories, requests for admission, and notices of depositions

without first determining that the materials are not available in the library or are inadequate.

B. Document Production Schedule

The defendant shall make initial voluntary disclosures of documents within ten (10) days of this order. Following this disclosure, document production shall proceed in accordance with the *Federal Rules of Civil Procedure* except as otherwise ordered by this court.

C. Expedited Discovery

Expedited discovery of plaintiffs is granted in certain cases where all of the following conditions exist:

1. The plaintiff is terminally ill;
2. Because of the gravity of plaintiff's illness, there is an urgent need to record and preserve plaintiff's testimony; and
3. Plaintiff has fully completed the Plaintiff's Fact Sheet and provided and fully complied with the execution of the medical authorization as required by the Fact Sheet and defendant has had an opportunity to conduct reasonable informal discovery prior to the taking of the plaintiff's deposition.

D. Preservation of Evidence

1. Preservation

Each party and its respective officers, agents, servants, employees, subsidiaries and attorneys shall preserve all devices, tangible things, documents, and other records. Preservation includes the obligation not to alter any such thing as to its form, content or manner of filing. Each party shall notify in writing (which in this context includes e-mail) its respective officers, agents, servants, employees, subsidiaries and attorneys of their obligation to preserve documents in accordance with

this order.

Before any devices, tangible things, documents, or other records which are reasonably calculated to lead to admissible evidence are destroyed, altered, or erased, counsel shall confer to resolve questions as to whether the information should be preserved. If counsel are unable to agree, any party may apply to the court for clarification or relief from this order upon reasonable notice. A party, which, within thirty (30) days after receiving written notice from another party that specified tangible things or documents will be destroyed, lost, or otherwise altered pursuant to routine policies and programs, fails to indicate in writing its objection shall be deemed to have agreed to such destruction.

2. Scope

The scope of this order is limited to tangible things and documents containing information potentially relevant to the subject matter of this litigation. Any tangible thing, document, or information described or referred to in any request or response made during this litigation shall, from the time of the request or response be treated for purposes of this order as containing potentially relevant information unless and until the court rules such information to be irrelevant.

Counsel are directed to confer to resolve questions as to what documents are outside the scope of this order or otherwise need not be preserved and, if and when possible, to agree upon an earlier date for permissible destruction of particular categories of documents. If counsel are unable to agree, any party may apply to the court for clarification or relief from this order upon reasonable notice. "Document" shall mean any writing, drawing, film, videotape, chart, photograph, phonograph record, tape record, retrievable data (whether carded, taped, coded, electrostatically or electromagnetically recorded, or otherwise), or other data compilation from which information can

be obtained, including but not limited to: notices, memoranda, diaries, minutes, purchase records, purchase invoices, market data, correspondence, e-mail, computer storage tapes, cards, or discs, books, journals, ledgers, statements, reports, invoices, bills, vouchers, worksheets, jottings, notes, letters, abstracts, audits, charts, checks, diagrams, drafts, recordings, instructions, lists, logs, orders, recitals, transcripts, telegram messages, telephone bills and logs, resumes, summaries, compilations, computations, and other formal and informal writings or tangible preservations of information.

Notwithstanding any other provisions of this order, as of the date of this order, persons may generate documents in the future without preserving dictation, drafts, interim versions, or other temporary compilations of information if such documents would not have been preserved in the ordinary course of business.

E. Protective Order/Confidentiality Agreement

The parties have been, and from time to time may be, requested to produce documents, things, and information which the parties contend contain confidential business and/or technical information, proprietary information, trade secrets, and/or other information considered by the parties as confidential, including, without limitation, information which, if disclosed, would invade physician-patient privileges and privacy rights of persons not parties to this action.

1. Nondisclosure of Stamped Confidential Documents.

Except with the prior written consent of the party or other person originally designating a document as a confidential document, or as hereinafter provided under this order, no stamped confidential document may be disclosed to any person.

A "stamped confidential document" means any document which bears the legend (or which shall otherwise have had the legend recorded upon it in a way that brings its attention to a reasonable

examiner) "CONFIDENTIAL" or "CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER" to signify that it contains information believed to be subject to protection under *Fed. R. Civ. P.* 26(c)(7), or as set out in paragraph 2 hereof. For purposes of this order, the term "document" when used herein is synonymous in meaning and equal in scope to the usage of this term in *Fed. R. Civ. P.* 34(a). Interrogatory answers, responses to requests for admission, deposition transcripts and exhibits, pleadings, motions, affidavits, and briefs that quote, summarize, or contain materials entitled to protection may be accorded status as a stamped confidential document, but, to the extent feasible, shall be prepared in such a manner that the confidential information is bound separately from that not entitled to protection.

2. Redaction.

In order to comply with applicable Federal regulations, and to protect the privacy of patients and other third parties, certain information may be masked or otherwise redacted from documents.

3. Permissible Disclosure.

Notwithstanding paragraph 1, stamped confidential documents may be disclosed to counsel of record for the parties in this action who are actively engaged in the conduct of this litigation; to the partners, associates, secretaries, paralegal assistants, and employees of such an attorney to the extent reasonably necessary to render professional services in the litigation; to persons with prior knowledge of the documents or the confidential information contained therein, and their agents; and to court officials involved in this litigation (including court reporters, persons operating video recording equipment at depositions, and any special master appointed by the court). Subject to the provisions of subparagraph (c), such documents may also be disclosed:

- a. to any person designated by the court in the interest of justice, upon

such terms as the Court may deem proper; and

b. to persons noticed for depositions or designated as trial witnesses to the extent reasonably necessary in preparing to testify; and to outside consultants or experts retained for the purpose of assisting counsel in the litigation; provided, however, that in all such cases the individual to whom disclosure is to be made has signed a form containing:

(1) a recital that the signatory has read and understands part VI.E of this order, relating to confidentiality, and will abide by it;

(2) a recital that the signatory understands that unauthorized disclosure of the stamped confidential documents and their substance constitute contempt of court; and

(3) a statement that the signatory consents to the exercise of personal jurisdiction by this court.

c. Before disclosing a stamped "Confidential" document to any person listed in subparagraph (a) or (b) who is a customer or competitor of the party that so designated the document (or a current or active employee of or consultant to either), the party wishing to make such disclosure shall give at least fifteen (15) days advance notice, in writing, to counsel for the party which designated such information as confidential, stating the names and addresses of the person(s) to whom the disclosure will be made, identifying with particularity the documents to be disclosed and stating the purposes of such disclosure. If, within the 15-day period, a motion is filed objecting to the proposed disclosure, disclosure is not permissible unless and until the court has denied such motion. The court will deny the motion unless the objecting party shows good cause why the proposed disclosure should not be permitted.

(1) As used in this paragraph, the term "customer" means any direct purchaser of products from the defendant, or any person or entity in the normal chain of distribution of the defendant's products (such as a pharmacy generally purchasing through wholesale houses). The term "customer" is not meant to include physicians.

(2) The term "competitor" means any manufacturer or seller of drugs.

4. Use.

Persons obtaining access to stamped confidential documents under this order shall use the information only for preparation and trial of this lawsuit (including appeals and retrials), and shall not use such information for any other purpose, including business, governmental, commercial, or other administrative or judicial proceedings.

5. Declassification.

At a date no sooner than the later of either January 31, 2003 or forty-five (45) days after the initial production of documents by a party, any party may challenge the designation of such material as "Confidential" by written notice to the party that produced the Confidential Discovery Material. After the initial production of documents by a party, no party may challenge the designation of material as "Confidential" in subsequent productions prior to thirty (30) days after the production has been made. Challenges of the designation of such material in subsequent productions shall also be by written notice to the party that produced the Confidential Discovery Material. Within twenty (20) days of any such challenge, the party that produced the disputed material shall respond, in writing, to the challenge setting forth the basis for the classification of the materials as "Confidential." If the parties, after they meet and confer, are thereafter unable to agree on whether

particular Confidential Discovery Material shall be treated as "Confidential," any party may file a motion with the court seeking a determination as to whether such material shall be treated as "Confidential". Regardless of which party files such motion, the party seeking to have the material treated as "Confidential" shall have the burden of establishing good cause for such a finding. Any document designated as "Confidential" shall be treated as "Confidential" unless and until the court determines that it is not or the parties so agree.

6. Confidential Information in Deposition.

a. A deponent may during the deposition be shown, and examined about, stamped confidential documents if the deponent already knows the confidential information contained therein or if there has been compliance with the provisions of paragraph 3.c. Deponents shall not retain or copy portions of the transcript of their depositions that contain confidential information not provided by them or the entities they represent unless they sign the form prescribed in paragraph 3.b. A deponent who is not a party or a representative of a party shall be furnished a copy of this order before being examined about, or asked to produce, potentially confidential documents. While a deponent is being examined about any stamped confidential document or the confidential information contained therein, persons to whom disclosure is not authorized under this order shall be excluded from being present.

b. Parties (and deponents) may, within fifteen (15) days after receiving a deposition, designate pages of the transcript (and exhibits thereto) as confidential. Confidential information within the deposition transcript may be designated by underlining the portions of the pages that are confidential and marking such pages with the following legend: "Confidential – Subject to protection pursuant to court order." Until expiration of the 15-day period, the entire

deposition will be treated as subject to protection against disclosure under this order. If no party or deponent timely designates confidential information in a deposition, then none of the transcript or its exhibits will be treated as confidential; if a timely designation is made, the confidential portions and exhibits shall be kept under seal separate from the portions and exhibits not so marked, and all copies of those portions and exhibits shall be treated as confidential pursuant to the terms of this order.

7. Confidential Information at Trial.

Subject to the *Federal Rules of Evidence*, stamped confidential documents and other confidential information may be offered in evidence at trial or any court hearing, provided that the proponent of the evidence gives five (5) days advance notice to counsel for the party or other person that designated the information as confidential. Any party may move the court for an order that the evidence be received *in camera* or under other conditions to prevent unnecessary disclosure. The court will then determine whether the proffered evidence should continue to be treated as confidential information and, if so, what protection, if any, may be afforded to such information at trial.

8. Filing.

Stamped confidential documents need not be filed with the Clerk except when required in connection with motions under *Fed. R. Civ. P.* 12 or 56 or other matters pending before the court. If filed, they shall be filed under seal and shall remain sealed while in the office of the Clerk so long as they retain their status as stamped confidential documents, subject to the court's independent review as set out in paragraph 16.

9. Client Consultations.

Nothing in this order shall prevent or otherwise restrict counsel from rendering advice to their clients in this litigation and, in the counsel thereof, relying generally on examination of stamped confidential documents; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure of any item so designated except pursuant to the procedures of subparagraphs 3(b) and 3(c).

10. Subpoena by Other Courts or Agencies.

If another court or an administrative agency subpoenas or orders production of stamped confidential documents which a party has obtained under the terms of this order, such party shall promptly notify the party or other person who designated the document as confidential of the pendency of such subpoena or order.

11. Nontermination.

The provisions of this order shall not terminate at the conclusion of this lawsuit. Within ninety (90) days after final conclusion of all aspects of this litigation, stamped confidential documents and all copies of the same (other than exhibits of record) shall be returned to the party or person which produced such documents or, at the option of such party or person (if it retains at least one copy of the same), destroyed. All counsel of record shall make certification of compliance herewith and shall deliver the same to counsel for the party who produced the documents not more than 120 days after final termination of this litigation.

12. Responsibility of Attorneys; Copies.

The attorneys of record are responsible for employing reasonable measures to control and record, consistent with this order, duplication of, access to, and distribution of stamped confidential documents, including abstracts and summaries thereof. No duplications of stamped confidential

documents shall be made except by counsel to provide working copies and for filing in court under seal. The attorneys of record in this litigation shall maintain a log of all copies made, in which they shall record the date of making of the copy, identify the material copied and list the person or persons to whom the copy was provided. Any copy provided to a person listed in subparagraphs 3(a) and 3(b) shall be returned to counsel of record upon completion of the purpose for which such copy was provided and the fact and date of the return shall be noted in the attorneys' log.

13. Relevance.

The designation of documents as "Confidential," pursuant to this order, shall not be construed as a concession by a party that such information is relevant or material to any issue or is otherwise discoverable, or by a receiving party that said documents are, in fact, privileged, confidential, proprietary or trade secret documents.

14. Inadvertent or Unintentional Production.

The inadvertent or unintentional production of documents containing, or otherwise disclosing, confidential, privileged, private, proprietary or trade secret information without being designated "Confidential" at the time of production or disclosure shall not be deemed a waiver in whole or in part of the producing party's claim of confidentiality or privilege, either as to the specific information disclosed or as to any other information relating thereto on the same or related subject matter. Any error in designation shall be corrected within a reasonable time after the producing party becomes aware of the error.

15. Scope.

Unless otherwise agreed in writing by the parties or ordered by this court, part VI.E of order, relating to confidentiality, shall remain in effect after the final resolution of this dispute by any

means, and this court shall retain jurisdiction to enforce part VI.E of order, relating to confidentiality.

16. Independent Review by the Court

From time to time, the parties shall provide the court a list identifying all documents (or, if individual identification would be unduly burdensome, categories of documents) marked confidential by such party, whether filed with the court or not. Documents filed with the court which the parties have agreed are confidential will be independently reviewed by the court to determine whether such document(s) shall remain sealed or shall be unsealed. In making this determination, the court will give due weight to the public interest in access to information that may be relevant to public health, welfare, or safety, as well as the interests of the parties in preventing disclosure of items such as trade secrets and private medical information.

F. Inadvertent Disclosures

The inadvertent production or disclosure of any privileged, confidential or otherwise protected document shall not be deemed either a general waiver of privilege, confidentiality or work product protection as to the document inadvertently produced or disclosed. In the event of inadvertent disclosure of any document, promptly upon discovery of such inadvertent disclosure the producing party may notify any party receiving the document that production was inadvertent, and that the producing party intends to move the court for a protective order with respect thereto. Upon receipt of such notification, the receiving party shall treat the document as confidential, and shall not disclose the document to any other person or use the document for any purpose in this litigation. Upon finding that the document is privileged, confidential, or otherwise protected and that its production was inadvertent, the court may direct the return of the document and all copies thereof to the producing party, preclude the use of the document and any information contained therein for

any purpose in this litigation, and order such other relief as the court deems necessary and appropriate. Before making application to the court for such relief, the producing party shall confer with the receiving party in an attempt to resolve informally any dispute regarding the inadvertent production.

G. Document Depositories

Each side may establish a document depository. By November 15, 2002, each side shall identify to the other the location and mailing address of any depository that it has established. Each side shall administer and bear the cost of its own depository. All documents disclosed and produced pursuant to this order shall be produced to the appropriate document depository. Each side shall develop and submit to the court a protocol for maintaining its depository, which shall address the location, filing system, access, copying, logs, and inventory records.

Reimbursement of certain expenses may be obtained by imposing user fees. These fees, however, should be kept to the minimum necessary to fund the costs of the depository incurred by reason of this litigation.

H. Numbering System and Indexing of Documents

All materials will be uniquely identified by a prefix of as many as three letters and a page number of as many as ten digits. This combination of letters and digits should then be used throughout the discovery process and at trials whenever referring to a particular document or page. Reasonable efforts should be made to avoid having the same page being assigned more than one such identifying number except when there is a need to account for different copies of the same document or page, for example, because of special notations placed on a document.

I. Legibility of Documents

Each producing party shall take reasonable steps to assure that the copies of the documents it produces are legible. To the extent a producing party cannot or does not produce a legible copy, it shall, upon request, provide a legible copy or make the original document(s) available for inspection and copying.

J. Authentication

Documents produced by any party shall be deemed to be authentic unless the party producing such document provides notice within fifteen (15) days after learning that such document is or may not be authentic. Such notice shall identify the document with particularity and briefly indicate the basis or reason for the belief that the document is not or may not be authentic. Any such notice should be given no later than forty-five (45) days prior to the close of discovery. Thereafter, such notice should only be given with leave of court for good cause shown.

K. Additional Discovery Details

Further details regarding the timing, manner, scope, and content of discovery shall be established under the management and supervision of the Honorable Mary E. Stanley, U. S. Magistrate Judge, as set out in this court's order of September 25, 2002.

VII. Status Conferences

A. Dates

Monthly status conferences will be held in Judge Goodwin's courtroom beginning at 10 a.m. on each of the following dates: October 16, 2002; November 20, 2002; December 18, 2002; January 15, 2003; February 19, 2003; March 19, 2003; April 16, 2003; May 21, 2003. These dates will not be changed except by unanimous consent of all parties and by leave of court. In the event that this court determines that a scheduled status conference is not needed, the court will cancel that

conference and notify Liaison Counsel of the cancellation. Additional conferences may be ordered from time to time by the court.

B. Participation

Any attorney representing any party, or any party unrepresented by counsel, may attend status conferences, but only Liaison and Lead Counsel, or such other counsel as the court may permit, may actively participate in the status conferences. The Executive Committee may actively participate in the status conferences to the extent that the conference deals with issues under the control and management of the Executive Committee.

Status conferences may be held before Judge Goodwin, Judge Stanley, or both.

VIII. Representation of Clients

All attorneys representing parties to this litigation, regardless of their role in the management structure of the litigation and regardless of this court's designation of Lead and Liaison Counsel and a Plaintiffs' Executive Committee, continue to bear the responsibility to represent their individual client or clients.

The court **DIRECTS** the Clerk to send a copy of this order to Plaintiffs' Liaison Counsel and Defendant's Liaison Counsel.

ENTER: October 7, 2002



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE